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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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466 7590 05/15/2007
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EXAMINER

BEISNER, WILLIAM H

ART UNIT

PAPER NUMBER

1744

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/070,950	Applicant(s) BALBI ET AL.	
	Examiner William H. Beisner	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, “the receptacle containing means (16, 22)” and “the receptacle containing means (28)” lack antecedent basis. Note the claim first recites “a receptacle (14)” not “a receptacle containing means”. Clarification and/or correction is requested.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 11, 15-17, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Chiao (US 6,654,664).

With respect to claim 11, the reference of Chiao discloses a scent diffusing device that includes a box (300) including a receptacle or receptacle means (100, 100", See Figure 4), a control means (380) wherein the box (300) includes the control means (380), display (370) and manual operating means (550) and the controller (380) includes means (610) for storing an algorithm for controlling the operation of the device for selective contact of a sample with ambient air as a function of the information presented to the user and the means (610) is adapted to receive the algorithm via downloading from an electronic device (390) and being adapted to store the algorithm for implementation (See column 10, lines 31-50).

With respect to claim 15, the reference of Chiao discloses using the device in a manner as recited in claim 15. That is, the emission of perfume by the device is linked to the audio/visual stimuli presented to the user (See column 10, lines 51-67). The process includes the step of downloading olfactory data form electronic device (390) to local computer (600).

With respect to claims 16 and 17, the device is operated by the controller (600, 380) in the manner as recited in claims 16 and 17.

With respect to claim 19, the control algorithm can be downloaded from a host computer via an internet link (See column 10, lines 31-50).

With respect to claim 20, the control algorithm can be downloaded from a TV broadcast signal (See column 10, lines 31-50).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 11, 14-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al.(EP 831 384) in view of Ivey, Jr. (US 6,053,738).

The reference of Murayama et al. discloses a device for diffusing perfumes in synchronism with information presented to a user comprising a box (100) containing a receptacle (101-n) for storing samples of perfume and which is fitted with means (102-n, 107, 108, 109) for the selective contacting of a sample with ambient air under the direction of control means (401)

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wherein the control means (401) includes means for storing (computer memory) an algorithm for controlling the operation of the selective contacting means as a function of the information presented to the user (See column 5, lines 19-27). The memory of the controller (401) can receive the algorithm via downloading from an electronic device (402) (See column 6, lines 11-16). With respect to the claimed display and manual operating means, controller (401) includes a display and keyboard (See Figure 3A).

While the reference of Murayama et al. discloses the use of a controller (401) with a display and keyboard connected to box (100), claim 11 differs by reciting that box contains the claimed controller, display and manual operating means.

The reference of Ivey, Jr. discloses that it is conventional in the art of automated olfactory stimulation devices to provide the box containing the perfume receptacles and air flow generation means with it's own central processing unit including a controller, memory and input/output unit (See column 4, lines 13-22). The reference of Ivey, Jr. also discloses that one of ordinary skill in the art can also use a personal computer as is used in the reference of Murayama et al. (See column 4, lines 35-41).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the box (100) of Murayama et al. with its own central processing unit including a controller, memory and input/output unit as suggested by the reference of Ivey, Jr. for the known and expected result of providing an alternative means recognized in the art to achieve the same result, control the dispensing of the contents of the receptacles in response to a program or algorithm. Providing the central processing unit within the box would allow the device to operate independently or in the absence of a personal computer.

With respect to claim 14, the device includes a socket (105) for connecting the device to an output of an electronic appliance (401, 501, 601). Also the computer (401) also includes sockets for connecting the computer to electronic device (402).

With respect to claim 15, the reference of Murayama discloses using the device in a manner as recited in claim 15. That is, the emission of perfume by the device is linked to the audio/visual stimuli presented to the user (See column 5, line 49, to column 6, line 50). The process includes the step of downloading olfactory data form electronic device (402) to local computer (401). Also the local computer can be located within the device as disclosed in Figure 17.

With respect to claims 16 and 17, the device is operated by the controller (401) in the manner as recited in claims 16 and 17 (See column 5, lines 19-27).

With respect to claim 19, the control algorithm can be downloaded from a host computer (402) via an internet link (See column 5, line 49, to column 6, line 28).

With respect to claim 20, the control algorithm can be downloaded from a TV broadcast signal (See column 6, lines 29-50).

9. Claims 2, 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al.(EP 831 384) in view of Ivey, Jr. (US 6,053,738) taken further in view of De Sousa (WO 97/37693)..

The combination of the references of Murayama et al. and Ivey, Jr. has been discussed above.

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Claim 12 differs by reciting that the perfume storage device is a rotary disk that operates with a motor device to position one of the perfume reservoirs for exposure to environmental air.

The reference of De Sousa discloses a device for selectively exposing a plurality of reservoirs of perfume to environmental air in response to control signals wherein the perfume reservoirs (16) are carried on a removable rotary disk (15) which is positioned with motor (13).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a perfume disk as disclosed by the reference of De Sousa in the system of the primary reference for the known and expected result of providing an alternative means recognized in the art to achieve the same result, selectively exposing a plurality of perfume containing reservoirs to environmental air. The removable disk allows different reservoirs of perfume to be easily replaced with respect to the rest of the device.

With respect to claim 13, the reference of De Sousa additionally discloses that the reservoirs for the perfume are frangible cells (See page 6, lines 1-3).

With respect to claim 18, while the reference of Murayama et al. disclosed downloading the control algorithm from a computer or TV, claim 18 differs by reciting the use of a CD-ROM.

The reference of De Sousa discloses that control signals can originate from a variety of devices including TV, videotape or CD-ROM (See page 1, lines 4-14).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the control algorithm using a CD-ROM for the known and expected result of providing an alternative means recognized in the art to achieve the same result, providing the control algorithm required to associate an audio/video stimuli with a predetermined perfume sequence.

Response to Arguments

10. With respect to the rejections of Claims 1-10 under 35 U.S.C. 102(b) and/or 103(a) including the reference of Murayama et al.(EP 831 384), Applicants argue (See pages 6-8 of the response filed 2/15/2007) that new claim 11 defines over all of the rejections of record including the reference of Murayama et al. because instant claim 11 requires that the means for diffusing the perfume and the means for storing the algorithm are contained in a single element (box) while the reference of Murayama et al. discloses two separate devices.

In response, while new claim 11 defines over the previous prior art rejections of record, new grounds of rejection have been made over the reference of Chiao (US 6,654,664) and the combination of the references of Murayama et al. and Ivey, Jr.(US 6,053,738). Note both the references of Chiao and the reference of Ivey, Jr. disclose that it is conventional in the art of scent diffusing devices provide the means for diffusing scent and the means for storing the algorithm in a single element as discussed in the new grounds of rejection above.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


William H. Beisner
Primary Examiner
Art Unit 1744

WHB